evidence that they were both concerned to establish a business which could ultimately be provision for their children, and he submitted that joint ownership of the business by the spouses would be more consistent with that purpose than sole ownership by the wife. There is no shorthand note of the evidence. The note made by the trial judge could not in the nature of things be a complete record of the evidence. It is not reasonable to assume that his notes contained every piece of evidence which came to his mind when it fell to him to consider his judgment. His overall impression of the evidence formed during the six weeks of the trial is more important than any analysis to be made from the wording of his notes. Their Lordships therefore see no sufficient reason to question the inference drawn by the trial judge as to the intention of the husband and his wife when she was set up in the business.

Their Lordships will accordingly dismiss the appeal and cross-appeal. There will be no order as to the costs before the Board.

Appeal and cross-appeal dismissed.

Solicitors: *Le Brasseur & Bury; Collyer-Bristow.*

BANKERS & TRADERS INSURANCE CO. LTD. v. NATIONAL INSURANCE CO. LTD.

[P.C. (Lord Scarman, Lord Brandon of Oakbrook, Lord Brightman, Lord Templeman and Sir William Douglas) February 25 & April 2, 1985]
[Privy Council Appeal No. 7 of 1984]

Insurance – Persons injured in road traffic accident – Judgment obtained against driver of car – Motor car insured with appellants by owner – Driver driving with permission of owner – Driver also covered by insurance with the respondents in respect of his own car – Whether appellants or respondents liable to satisfy judgment – Road Traffic Ordinance 1958, ss. 74, 75, 80 & 82.

Road Traffic – Insurance Policy – Which insurer liable to satisfy judgment.

In this case two persons (the third parties) suffered personal injuries when they were run into and knocked down by a motor vehicle owned by Kwang and driven with his consent by Ko. They sued Ko, the driver, and obtained judgment, which remained unsatisfied. Ko was insured under a policy of insurance issued to him by the respondents. The policy was in respect of a vehicle other than the one involved in the accident but contained an extension of cover in these terms – "The Company will indemnify... the insured whilst personally driving a private motor car... not belonging to him and not hired to him under a hire-purchase agreement".

At the time of the accident Ko was driving a private motor car belonging to Kwang. Kwang was insured with the appellants. The policy was in respect of the car which Ko was driving and it provided *inter alia* that "The Company will indemnify (a) an authorised driver who is driving the motor vehicle provided that such authorised driver..... is not entitled to indemnity under any other policy."

In the High Court Mohamed Yusoff J. held that the driver's policy provided him with cover and that upon the true construction of the Ordinance his insurers were liable to satisfy the judgment against Ko. On appeal the Federal Court took a different view and held that the insurers of the motor car were liable. They allowed the appeal of the driver's insurers and held the owner's insurers liable to satisfy the judgment against the driver – see [1983] 2 M.L.J. 105.

The appellants appealed.

Held: it is plain from the terms of the owner's policy that the owner's insurers were not on risk when the car was being driven by another person who had a policy of his own which covered him. The driver's insurers were therefore on risk at the time of the accident and not the owner's insurers. The respondents, being the driver's insurers were liable to satisfy the third party judgment against their insured.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

George Newman Q.C. (*Lee Bian Tian* with him) for the appellants.

P. Devadas for the respondents.

Cur. Adv. Vult.

Lord Scarman (delivering the Judgment of the Board): In this appeal from the Federal Court of Malaysia the issue is which of two insurance companies is liable under section 80 of the Road Traffic Ordinance (No. 49 of 1958) to satisfy a judgment obtained by a third party in respect of a road traffic accident. At the conclusion of the hearing their Lordships indicated that they would report their opinion to His Majesty the Yang di-Pertuan Agong that the appeal ought to be allowed with costs before the Board and below and that they would give their reasons later.

On June 15, 1969 Abdul Hafidz and Mohamediah bin Jali ("the third parties") suffered personal injuries in a road accident. They were run into and knocked down by a motor vehicle owned by Kwang and driven with his consent by Ko Beng Lai. They sued Ko, the driver, and on July 28, 1981 obtained judgment against him for a total sum of $44,098 and interest from the date of judg-

ment at 8% per annum. The judgment was and remains unsatisfied.

Ko was insured under a policy of insurance issued to him by the National Insurance Co. Ltd, respondent to this appeal. Their Lordships will refer to this company as "the driver's insurers". The policy was in respect of a vehicle other than the one involved in the accident and contained an extension of cover in these terms:–

"The Company will indemnify...
... the insured whilst personally driving a private motor car ... not belonging to him and not hired to him under a hire purchase agreement."

Ko was driving at the time of the accident a private motor vehicle which belonged not to him but to Kwang. Kwang was insured with the Bankers and Traders Insurance Co. Ltd, the appellant, to whom their Lordships will refer as "the owner's insurers". His policy was issued to him in respect to the car which Ko was driving, and it provided, *inter alia*, that:–

"The Company will indemnify
(a) an authorised driver who is driving the motor vehicle provided that such authorised driver...
....
... is not entitled to indemnity under any other policy."

Ko was the authorised driver: but he was entitled to an indemnity under his own policy. He was, therefore, not covered by Kwang's policy.

Section 80 of the Ordinance imposes a duty upon insurers to satisfy judgments against persons insured in respect of third party risks. Uncertain as to which company was on risk, the third parties issued a writ against both companies on November 14, 1976. The ensuing litigation has been between the two insurance companies, the ultimate question being which of the two companies must satisfy the judgment obtained against the driver.

The case was heard in the High Court of Malaya by Mr. Justice Mohamed Yusoff. The two issues for the court's decision were defined as follows:–

(a) whether the policy of the first defendants or the second defendants were on risk at the material time of the accident; and

(b) whichever defendants are found to be liable to satisfy the judgment sum and costs, could they call for contribution from the other for 50 per cent in view of condition 7 of the policy of insurance.

The judge held that the driver's policy provided him with cover and that upon the true construction of the Ordinance his insurers were liable to satisfy the judgment against Ko. This being the judge's decision on the first issue, the second did not arise.

On appeal the Federal Court took a different view. Like the trial judge they thought the case to be one of double insurance. They differed, however, from the judge in construing the Ordinance as being primarily concerned with the insurance of the car and only secondarily, if the car was not insured, with the insurance of the driver. They put their view thus:–

"As this car was insured with the second defendants, [the owner's insurers who are the appellants in this appeal] it is their policy which was on risk",

and again:–

"The decisive factor which is the subject matter of the insurance is the specified motorcar. It is because of the use of the motorcar that an insurance is required."

Accordingly, they allowed the appeal of the driver's insurers and held the owner's insurers liable to satisfy the judgment against the driver.

Their Lordships cannot accept the Federal Court's view that this was a case of double insurance. It is plain from the terms of the owner's policy that the owner's insurers were not on risk when the car was being driven by another who had a policy of his own which covered him. Once it is recognised that only one of the two policies, namely the driver's policy, was on risk when Ko was driving, it becomes plain upon the wording of section 80(1) of the Ordinance that the driver's insurers must satisfy the third parties' judgment.

The sub-section is in these terms:–

"(1) If, after a certificate of insurance has been delivered under sub-section (4) of section 75 of this Ordinance to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of sub-section (1) of section 75 of this Ordinance (being a liability covered by the terms of the policy) is given against the insured person, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments."

The driver's insurers had delivered to Ko a certificate of insurance in relation to his policy. The liability to the third parties, being in respect of personal injuries, was a liability covered by the terms of the driver's policy; and judgment had been given against Ko, himself being a person insured by the policy. The driver's insurers were, therefore, on risk.

In their Lordships' view it is not necessary to go further than the terms of section 80(1) in order to determine that the driver's insurers were under a duty to satisfy the judgment. The Federal Court did, however, go further: they examined other sections within Part IV of the Ordinance, notably section 74(1) and section 75(1)(b), from which they drew the inference that it was the legislative purpose of the Ordinance to require that, in all cases where there were in existence more than one policy of insurance, the insurers of the vehicle's owner are to satisfy the third party's judgment and that exclusions of cover contained in the owner's policy are to be disregarded. They believed this view of the Ordinance's purpose to be reinforced by the use of the definite article in the references to the vehicle which are to be found in section 74(1) and section 75(1)(b) of the Ordinance.

Their Lordships respectfully disagree. First, though certain conditions if found in a policy issued under the Ordinance are to be of no effect, the exclusion of an owner's cover when the car is being driven by an authorised driver who has his own insurance is not included among the specified excluded conditions: section 78. Section 79 also avoids certain restrictions on the scope of third party cover but does not include this exclusion amongst those avoided. An attempt was made before the Board by counsel for the owner's insurers to argue that in construing section 80(1) one must disregard the terms of the policy. The submission is flatly contradicted by the language of the subsection which expressly directs attention to the liability covered by "the terms of the policy". The Ordinance proceeds upon the basis of the terms of the policy, subject only to the specified exceptions and restrictions contained in sections 78 and 79. No doubt it is for this reason that any person against whom a third party claims damages for personal injury arising out of a road accident is under a duty to provide the third party with information as to his insurance cover: section 82(1).

Secondly, their Lordships cannot accept the Federal Court's view as to the legislative purpose of the Ordinance. The heading to Part IV of the Ordinance is "Provisions against third party risks arising out of the *use* of motor vehicles". Section 74(1) provides that it shall not be lawful for any person "to *use*, or to cause or permit any other person to use" an uninsured motor vehicle. (Emphasis supplied). Section 75(1)(b) requires a policy, if it is to comply with the Ordinance, to specify the person, persons, or classes of persons covered in respect of third party liability. Thus the heading to Part IV and each sub-section clearly indicate that it is not the vehicle but the use of the vehicle which has to be insured, and that the Ordinance applies primarily to the use and only secondarily to any person who causes or permits another person to use the vehicle. The Federal Court read references to "the motor vehicle" in section 74(1) and section 75(1)(b) as references to the vehicle named in the insurance policy. But in their Lordships' view it is plain that "the motor vehicle" referred to in each subsection is the vehicle being used and is not confined to a motor vehicle named in an insurance policy. Though Ko's policy did not name the vehicle he was driving when the accident occurred, there is no doubt that it covered the vehicle in use at that time; nor can there be any doubt that it was his use as the authorised driver at that time which was covered by the policy issued by Ko's insurers. Conversely the owner's policy did not cover Ko's use of the car at the time of the accident.

Their Lordships, therefore, conclude that the driver's insurers were on risk at the time of the accident, and not the owner's insurers. The respondents, being the driver's insurers, are liable to satisfy the third party judgment against their insured. A number of other points were adumbrated by counsel for the respondent both in the written case for the respondent and in argument. None of these points is open to the respondent, being outside the agreed issues (quoted above) which were put to the Federal Court: their Lordships do not, therefore, deal with them. Their Lordships answer the first of the agreed issues by declaring that the policy of the driver's insurers was the only policy at risk at the time of the accident: the second question (apportionment of liability) does not arise because the owner's insurers were not on risk at the time.

Their Lordships would finally draw attention to a disturbing feature of the case. The third parties obtained judgment on July 28, 1981. Because of the dispute btween the two insurance companies their judgment has remained unsatisfied for over three years. The time elapsed between the accident and final determination of the dispute be-

tween the insurance companies is an unacceptable fifteen and a half years. The companies who conduct motor insurance business and accept the responsibilities and, no doubt, the profits of the business of authorised insurers under the Ordinance, should surely be able to devise an agreed scheme under which the satisfying of a third party's judgment does not have to wait upon the resolution of a dispute between the insurers concerned. And, if such a scheme is not forthcoming, their Lordships would suggest that the Ordinance be strengthened so as to obviate delay such as the third parties have suffered in this case.

Appeal allowed.

Solicitors: *Coward Chance; Linklaters & Paines.*

SINGAPORE REPORTS

KUN KAY HONG v. TAN TEO HUAT

[C.A. (Sinnathuray, Lai Kew Chai & Chua JJ.) November 30, 1984]
[Singapore – Civil Appeal No. 1 of 1984]

Practice and Procedure – Writ – Extension of validity of writ – Request by defendant's solicitors to withhold service – Delay in applying for extension of validity of writ – Whether fatal – Delay induced by or contributed to by words and conduct of defendant's solicitors – R.S.C. 1970, O.12, r.7(1) – Limitation Act (Cap. 10).

The question in this appeal is whether in the circumstances of this case there was sufficient or good reason such that the discretion to extend the validity of the writ was properly exercised.

After accepting service of the writ the defendant through his solicitors entered a conditional appearance and applied for an order that the renewal and service of the writ be set aside under O.12, r.7(1) of the Rules of the Supreme Court 1970 and for a further order that the plaintiff's action be dismissed as being statute-barred by virtue of section 6(4) of the Limitation Act (Cap. 10). The learned Deputy Registrar dismissed the defendant's application with costs. The defendant's appeal to the Judge in chambers was also dismissed with costs. The defendant appealed to the Court of Appeal.

Held, dismissing the appeal: (1) it was a sufficient reason that the solicitors for the underwriters of the defendant had requested the plaintiff's solicitors to stay their hands and withhold service of the writ. This request remained operative for 10 of the 12-month period of the validity of the writ;

(2) the delay of 5 months and 16 days in the filing of the application by the plaintiff to extend the validity of the writ was not fatal on the particular facts of the case. In all the circumstances the delay had been induced, or contributed to, by the words and conduct of the solicitors for the defendant.

Cases referred to:

(1) *Heaven* v. *Road and Rail Wagons Ltd.* [1965] 2 Q.B. 355, 361, 366.
(2) *Easy* v. *Universal Anchorage Co. Ltd.* [1974] 1 W.L.R. 899.
(3) *Re Chittenden decd.; Chittenden* v. *Doe* [1970] 1 W.L.R. 1618.

COURT OF APPEAL.

H.E. Cashin for the appellant.
Lim Kia Tong for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): In May last year, the learned Assistant